FILED
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JAMES R. BROWNING, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

STATES OF WISCONSIN, MINNESOTA, OHIO AND PENNSYLVANIA,

Complainants,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,

Defendants.

No. 2 Original.

STATE OF MICHIGAN,

Complainant,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,

Defendants.

No. 3 Original.

STATE OF NEW YORK,

Complainant,

vs.

STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO,

Defendants.

No. 4 Original.

OPPOSITION TO COMPLAINANTS' MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF UNTIL MARCH 31, 1959.

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Attorneys for the Defendants.

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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OPPOSITION TO COMPLAINANTS' MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF UNTIL MARCH 31, 1959.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Complainants' amended application was filed November 3, 1958, and their brief in support thereof was filed November 19, 1958. Defendants' brief in opposition was filed January 19, 1959. On February 6, 1959, the Clerk granted the request of the Solicitor General that he be permitted to file the brief *amicus curiae,* requested by the Court, by March 16, 1959. Complainants now request that their time for filing a reply brief be extended to March 31, 1959.

Complainants' original application, filed in December 1957, for the same relief now sought was denied by the Court last term, with leave to re-file with more definite and certain allegations. Complainants now seek to supplement the allegations in their amended application with purported new facts to be added two and one-half months after defendants have submitted their answering brief in opposition. A reply brief, we submit, is not supposed to serve the function of a supplemental pleading or to present any facts which the defendants will not have an opportunity to refute.

Complainants give as a reason for their request for an extension of time to file their reply brief to March 31, 1959, that certain information needed will not be available until that time, and, in particular, refer to "a further study now being made by the Corps of Engineers, United States Army, concerning damages to navigation and shipping" resulting from the "diversion of domestic pumpage water at Chicago," and to additional data relating to the efficiency of other sewage disposal plants in the Great Lakes area.

These are not adequate grounds for the extension of time

requested. Defendants are advised that the Solicitor General has requested information from the Corps of Engineers with respect to this proceeding. Brig. Gen. J. L. Person, U. S. A., Assistant Chief of Engineers for Civil Works, advised Congressman Yates (Illinois) on February 12, 1959, orally and by letter, that the only study the Corps is now making is that requested by the Solicitor General. (A copy of said letter is attached hereto as Exhibit "A".)

Complainants' desire to utilize in a reply brief matters not embodied in their amended application and their wish to reply to the Solicitor General do not justify granting complainants additional time.

The Solicitor General, who is now seeking additional information from both sides, should be able to base his presentation on the statements of both complainants and defendants without one side alone having the privilege of a subsequent reply.

Moreover, the subject matter of the studies being made by the Corps of Engineers and the matter of the operating efficiency of sewage plants would not be pertinent to the instant application. There is no connection between the operations of other sewage disposal plants in the Great Lakes area—or the plants of the defendants, for that matter—and the decree of 1930 permitting the discharge of sewage effluent in the Sanitary Canal and the Mississippi watershed. The Court in its 1930 decree (281 U. S. 179) enjoined the defendants from diverting, after December 31, 1938, more water than an annual average of 1500 c.f.s., in addition to domestic pumpage. The injunctive decree was entered upon a showing of injury to complainants, consisting in part of damage to navigation and shipping, and characterized by this Court as "great losses" in its earlier opinion (278 U. S. 367, 409).

In allowing a diversion of 1500 c.f.s., in addition to

domestic pumpage, the Court did so upon a holding that the withdrawal of water for pumpage and the discharge of effluent into the Mississippi watershed was "more reasonable than the opposite demand." (281 U. S. 179, 200.) The Court said further (*ibid.*) that "the claims of the complainants should not be pressed to a logical extreme without regard to relative suffering and the time during which complainants have let the defendants go on without complaint." The Court's decision therefore rests partially on laches, as well as upon the application of equitable considerations analogous to the common law "reasonable use" theory, or the doctrine of "equitable apportionment," or "equitable division" of waters which has been applied by this Court in controversies between States.

Since, after a consideration of all the facts, including a showing of injury to shipping and navigation and other damage, the Court held the defendants' permanent withdrawal of water from Lake Michigan for domestic pumpage to be "more reasonable than the opposite demand," the withdrawal would not become unreasonable because of the damage now alleged or the alleged operating inefficiency of the sewage treatment plants of the Sanitary District which complainants now wish further time to develop.

WHEREFORE, defendants respectfully submit that the motion to extend the time for filing of a reply brief by complainants to March 31, 1959, be denied.

Respectfully submitted,

LATHAM CASTLE,
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WILLIAM C. WINES,
Assistant Attorney General, State of Illinois,

GEORGE A. LANE,
Attorney, The Metropolitan Sanitary District of Greater Chicago,

Attorneys for the Defendants.

EXHIBIT A.

HEADQUARTERS
DEPARTMENT OF THE ARMY
Office of the Chief of Engineers
Washington 25, D. C.

In Reply Refer to
ENGWD

12 February 1959

Honorable Sidney R. Yates
House of Representatives

DEAR MR. YATES:

On 11 February you inquired concerning studies the Corps of Engineers has made on the evaluation of navigation losses attributable to the diversion of "domestic pumpage" at Chicago. It was indicated that the only study of this matter was made in order to supply information to the Solicitor General with respect to the amended application of certain Great Lake states to the Supreme Court.

In response to your request, I wish to confirm this information.

Sincerely yours,

STANLEY G. REIFF,
Col. C. E.,

J. L. PERSON,
Brigadier General, USA,
Assistant Chief of Engineers for Civil Works.
In the absence of Gen. Person.